IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/08/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.3731 of 2001

C.Thiraviam .. Petitioner

-vs-

The Managing Director
Tamil Nadu Agro Engineering and
Service Co-Operative Federation
Ltd., 117, Thiagaraya Road
T.Nagar, Chennai 17. .. Respondent

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the respondent made in Adm.2/12100/2000 dated 31.1.2001 passed by the respondent herein and quashing the same.

For Petitioner : Mr.A.Sankarasubramanian

For Respondent : No appearance

:ORDER

This writ petition has been brought forth seeking a writ of certiorari to quash the order of the respondent dated 31.1.2001.
2. When the matter was taken up for consideration, there was no representation for the respondent's side. This Court heard the learned Counsel for the petitioner, perused the affidavit in support of the petition and had a scrutiny of the materials available including the order under challenge.

3. From the affidavit filed in support of the petition and the submissions made by the learned Counsel for the petitioner and also the counter affidavit filed by the respondent, it would be quite clear that the petitioner was working as a Managing Director in the District Agro Engineering Service Society, Kanchipuram from 26.6.2000, and previously, he was the Managing Director of Tirunelveli Society. On transfer from Tirunelveli to Kanchipuram, he was serving so, and he was holding the said permanent post. The Tamil Nadu Agro Engineering Cooperative Federation Ltd., the respondent herein, is a state level unit, and its District Unit is known as District

Cooperative Agro Engineering Services Ltd. The District Unit is affiliated to AGROFED as referred to above. Pursuant to the proposal to start Uzhavar Santhai at Kanchipuram, the site for starting the Uzhavar Santhai was chosen by the District Collector. The construction work was actually entrusted with the petitioner, and it was done under his supervision also. After the work was over, some technical difficulties and lapses in the construction were noticed by the Commissioner, Agricultural Marketing, the funding authority, and the same was reported to the respondent. On receipt of such report, the respondent served on the petitioner, an order dated 31.1.2001 removing him from service, which is under challenge.

4. A reading of the order impugned would reveal that the petitioner was held responsible for the following.

"(a) As a Managing Director he has not inspected the construction of Uzhavar Sandhai at Kancheepuram and not sent any report to this office.
(b) He has not requested to this office the site selected on the construction work of Uzhavar Sandhai work at Kancheepuram is suitable or otherwise.
(c) He has not sent technical report about the foundation of beams, basement and lintel etc. He has not consulted any Senior Officer for inspection and further follow up action.
(d) Therefore, he has not done his legitimate duties as Managing Director of the society in this aspect. Due to his lethargic attitude, the Federation has incurred a loss of Rs.6.00 lakhs for which he is responsible for the loss incurred to the Federation."

The said order does not refer to any memo of charges levelled against the petitioner or any enquiry conducted or speaks of any opportunity of being heard before passing such an order.

5. A scrutiny of the counter affidavit would also reveal that the order under challenge has been passed directly without even framing charges against the petitioner or calling for any explanation or giving an opportunity of being heard to the petitioner; but on the contrary, the affidavit would read that the petitioner under the provisions of the Act should have preferred an appeal, challenging the said order of termination of service. It was contended by the respondent's side that instead of exhausting that remedy, the petitioner has chosen to file this writ petition, and hence, the writ petition was to be dismissed.

6. In a given case like this, where the respondent in his capacity as Managing Director, Tamil Nadu Agro Engineering and Service Cooperative Federation Ltd, in violation of the principles of natural justice, has passed such an order, without any hesitation, the same has got to be set aside. The case of the respondent that there are appeal provisions available under the Act, and he should have exhausted the remedy by way of an appeal does not require any consideration at all in a case like this where an order has been passed even without framing charges or calling for explanation or giving an opportunity of being heard. Therefore, it is a fit case, where the order of the respondent has got to be set aside. Accordingly, the petitioner is entitled to the relief of writ of certiorari asked for. It is brought to the notice of the Court that pending the writ petition, the petitioner works in the same department in the said post, pursuant to an order of stay of the impugned order by this Court.

7. In the result, this writ petition is allowed, and the order of the

respondent is quashed. However, it is made clear that this order in no way would stand in the way of framing the necessary charges and conduct of an enquiry against the petitioner by the competent authority in accordance with law. No costs.

Index : yes

Internet: yes

To:

The Managing Director
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nsv/